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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,408	12/15/2000	Miriam Fields-Babineau	4523-001	7703

7590 04/27/2004  
TODD E. MARLETTE, ESQ.  
380HOMELAND SOUTHWAY, #1A  
BALTIMORE, MD 21212

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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20040426

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

### **SUPPLEMENTAL ACTION**

1. The following is a clarification of the record regarding the Remarks pertained in the Applicant's submission after final dated 04/13/2004.

### **CLARIFICATION REGARDING DRAWING CORRECTIONS**

The drawing corrections dated 08/20/2002 are approved, Corrected but non-formal drawings were submitted as received by the office on 03/17/2003

### **CORRECTION TO REQUIRMENT FOR APPEAL BRIEF**

A Notice of Appeal was filed April 14, 2004 and has been received by the Office.

### **REQUEST FOR NEW OFFICE ACTION**

The request for a new office action has been addressed in the Advisory Action dated 04/26/2004.

### **REQUEST FOR CONFIRMATION OF PRIOR FILED DECLARATION**

Regarding the Declaration of Eric Udler under 37 C.F.R section 1.132 on September 13, 2002. The October 9, 2002 action in which it was stated the declaration was "not germane to the rejections at issue" was not in reference to the above declaration as the declaration of Eric Udler was not included within the information examined by the Examiner at the time of the previous statement. The reference to the declaration was "not germane to the rejections at issue" was

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solely directed to the submission of information regarding the lack of utility of the cited prior art.

The Examiner as discussed below has now considered the Declaration of Eric Udler submitted herein.

The declaration under 37 CFR 1.132 filed 09/13/2002 is insufficient to overcome the rejection of claims 6-25 based upon the rejections as set forth in the last Office action because: the Declaration is directed to the commercial success of the Comfort Trainer at the Super Pet Expo. Eric Udler has declared that the Comfort Trainer has been successfully exhibited with commercial success and that at the April 6-7 Super Pet Expo, the Comfort Trainer was sold out of product. However, this Declaration provides no basis for what Mr. Udler considers to be a "commercial success." Is his basis measured on the number of individuals who visited the particular booth at the trade show, the number of individuals who requested additional information for the product, the number of people watching a demonstration? Further the declaration states that the Comfort Trainer was sold out of product. However, this statement does not provide an overwhelming support for commercial success, as the number of product sold was not stated. As such, the basis of commercial success cannot be ascertained and the Declaration of Eric Udler is therefore insufficient to overcome the rejection of record.

#### REQUEST FOR COURTESY COPY OF CONTINUATION SHEET

A copy of the "continuation sheet" of the Office Action dated April 3, 2003 is being furnished herewith.

#### REQUEST FOR CONFIRMATION OF PRIOR AMENDMENTS

The "continuation sheet" included herewith confirms the status of the prior amendments as requested in the Amendment After Final dated March 10, 2003.

#### REQUEST FOR LEGAL STANDARD AS BASIS FOR REJECTION

Case law regarding the formation of a singular article from an article previously formed in two pieces is as follows: *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). It is noted that the "holding" was cited in Paper number 14, dated October 9, 2002 and was not subsequently challenged or traversed within the Applicant's responding arguments.

Case Law regarding selection of a material is as follows: *In re Leshin*, 125 USPQ 416. The cited case was presented to the Applicant in Paper number 4 dated February 8, 2002 and was not subsequently challenged or traversed within the Applicant's responding arguments.

#### REQUEST FOR RECONSIDERATION IN VIEW OF APPLICANT'S EXHIBITS

The information disclosure statement filed 04/13/2004 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

The information disclosure statement filed 04/13/2004 fails to comply with 37 CFR 1.97(d) because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

It is noted that while the Summary of Exhibits for Consideration, including the Declaration of Eric Udler, has not been considered as containing issues not directed SOLELY to issues which were newly raised by the Examiner in the final rejection, the Declaration has been considered

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due to the prior entry in the case. It is noted that the Examiner in the final rejection did not raise the question of commercial success; only the statement that a Declaration submitted by the Applicant has not been received by the Examiner and therefore was not considered at the time. As commercial success was not an issue newly raised by the Examiner in the final rejection, the additional exhibits presented regarding commercial success are therefore not directed to newly raised issues within the Final Rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

  
**CHARLES T. JORDAN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**

Continuation of 10. Other: acknowledgement is made that the final rejection dated 10/09/02 was based upon all previous amendments including those dated August 8, 2002 and the second supplemental amendment dated September 13, 2002.



<p align="center"><b>SUMMARY OF EXHIBITS FOR CONSIDERATION BY EXAMINER</b></p>		Atty Docket	Serial No.
		MFB-0001	09/736,408
		Applicant	
		Miriam Fields-Babineau	
		Filing Date	Group Art Unit
		Dec. 15, 2000	3644
OTHER (Including Author, Title, Date, Pertinent Pages, etc.)			
Exhibit 1	Thomas Register 1999, pg. COR/10976, CORDAGE: BRAIDED.		
Exhibit 2	Thomas Register 1999, pg. COR/10930, CORD: DOG LEASH.		
Exhibit 3	Western filament, Inc., 2002 on-line product catalog, pg. 200-203, Flat Braided Tapes, Lacing and Spot Tying Materials, and Lacing Tapes, as of April 28, 2003.		
Exhibit 4	Oxford English Dictionary Online, 2003 Oxford University Press, dictionary definition for "flat", pg. 1-30, <a href="http://dictionary.oed.com">http://dictionary.oed.com</a> .		
Exhibit 5	Oxford English Dictionary Online, 2003 Oxford University Press, dictionary definition for "lofted", pg. 1, <a href="http://dictionary.oed.com">http://dictionary.oed.com</a> .		
Exhibit 6	§ 132 Declaration of Eric Udler, president, Super Pet Expo, dated September 12, 2002.		
Exhibit 7	Copy of the facsimile transmission letter dated September 13, 2002 transmitting, <i>inter alia</i> , the Declaration of Eric Udler.		
Exhibit 8	Copy of a facsimile transmission receipt indicating receipt of the Declaration of Eric Udler by the USPTO on September 14, 2002 at 12:45.		
Exhibit 9	Copy of a paper product label that is configured to fit within a plastic sales container for a commercial embodiment of the present invention.		
Exhibit 10	§ 132 Declaration of Alice De Groot, BS., MS., DVM, dated February 4, 2004, and inventor of U.S. Patent No. 4,483,275 and 4,566,255.		
Exhibit 11	"Tackett's Mill Veterinary Hospital," letter dated March 28, 2003 from Aileen Tubbs, Veterinary Practice Manager.		
Exhibit 12	"Carol's Positive Dog Training," letter dated <del>December 11, 2003</del> <i>Sept. 15,</i> pg. 1 <del>x-2</del> .		
Exhibit 13	"To Whom it may Concern," letter dated March 25, 2003 from Susan Sharpe <a href="mailto:sus@anxietywrap.com">sus@anxietywrap.com</a>		
Exhibit 14	"Another glowing report on the Comfort Trainer," dated March 22, 2003 from Mary & Bee, <a href="mailto:teddybsmom@cox.net">teddybsmom@cox.net</a>		
Examiner		Date Considered	
EXAMINER: Due to the large number of Exhibits, the Examiner is kindly requested to initial along side each exhibit and include a copy of this form with next communication to Applicant.			